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the health department. The supervision of all health work must be conceded to the health authorities, and usurpation of this function by any agency should not be tolerated.

I have spoken of the value of the health center as a public health instrument. There is a very great need for standardization of the scope of work of health centers.

The term "health center" has been very loosely used as a name for everything from a milk station to a miniature health department. A real health center should be a complete health department. In a small city the health department should be the health center. In larger cities health centers should be established for the purpose of decentralizing official health activity and linking with it every agency carrying on public health activities within the area. It should also serve as a common headquarters in order to effect the closest cooperation with workers for sociologic and economic betterment.

To operate successfully, the health center must have official status, and in addition to the diagnostic and dispensary facilities, the public health nurses and other official personnel, it should house the liaison officers, when necessary or advisable, from unofficial or voluntary agencies. It must be remembered that one of the most useful results made possible by a properly conducted health center is the creation of a real community spirit which will furnish the popular support necessary for success in public health work.

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## **LIABILITY OF A CITY FOR ACTS COMMITTED BY ITS OFFICERS IN ENFORCING HEALTH LAWS.**

By DAVID ROBINSON, United States Public Health Service.

Hesitancy and reluctance are manifested by some city administrative and health officials in enforcing quarantine and isolation provisions of venereal disease control laws and ordinances. Reference is made particularly to the mayors, chiefs of police, and health officers who are in sympathy with the efforts of the State boards of health in cooperating with the United States Public Health Service in conducting the present campaign for control and eradication of syphilis, gonorrhea, and chancroid.

The argument is urged by some officials of this class that in enforcing the provisions of the venereal disease control ordinances and laws, some day some one who has suffered legal injury to his or her rights "will bring a big damage suit against the city." Fear, lest the city be mulcted in damages, has caused these officials to be extremely timid in performing a duty devolving upon them by law.

In urging more thorough enforcement of the recently passed laws for the control of venereal diseases, the writer is not unmindful of the difficulties that sometimes arise from faulty administration of these

or other laws. Police and other officers, in enforcing the laws referred to, have no reason to, and should not be permitted to, violate existing law when so doing.

However, it is argued, police and other officers are given to human frailties, and by exercise of excessive zeal or through negligence or mistake will exceed the authority granted to them, to the injury of some one, and the city will be liable for damages to the injured person. It is also maintained that improper treatment of detention hospital inmates will make the city liable for the consequences. It is desired that persons receiving treatment in detention hospitals receive the best of care while so detained, and this article is not written in an effort to excuse anything less. But if, through unforeseen causes, a person so detained suffers injury, is the city liable in damages to the person so injured?

The right of a city to quarantine persons infected with contagious diseases as an incident of its police power, the right to administer treatment compulsorily to persons isolated in contagious disease hospitals in the effort to cure such persons and thereby reduce the city's burden in caring for them, and other correlated subjects, are beyond the scope of this article. Consideration is given here to the *city's liability* in the enforcement by its officers of venereal disease quarantine laws and the necessary action incident thereto.

A city is a public or municipal corporation, deriving its corporate powers from the State just as does a private corporation organized for profit. But, unlike a private corporation, a city exercises governmental or public functions. These can best be illustrated by the many ordinances enacted and enforced for the protection of the health, safety, and peace of its inhabitants. A city functions in a corporate or proprietary capacity as well as in a governmental capacity. The proprietary functions of a city are represented by the operation of waterworks and lighting plants, the collection of garbage, etc. In acting for the city in its proprietary capacity the employee or officer is its agent, and the city is liable for his negligent acts to the same degree as a private corporation would be under the same circumstances. On the contrary, when the city acts in its governmental capacity, it is *not* liable for the acts of its officers or employees. The great weight of authority upholds this position, and it can be considered as definitely decided in this country.

The enforcement of laws and ordinances against prostitution, the establishment and maintenance of contagious disease hospitals, the quarantine of persons infected with contagious diseases, and the enforcement of laws designed to prevent the spread of contagious diseases are all public and governmental functions, and a city is not liable for the acts of its employees in enforcing and administering said functions.

Many States are represented in the following authorities construing this point:

A city acting in its public capacity is not liable for negligence of its employees. *Behrmann v. City of St. Louis* (201 S. W. 547).

A city is not liable for the tortious acts of its officers in the enforcement of an ordinance enacted for the public good. *McConnell v. City of St. Charles* (204 S. W. 1075).

A municipal corporation, while enforcing a valid ordinance requiring citizens and residents of the city to submit to vaccination, is exercising a governmental power, and is not liable to a citizen who may sustain damage on account of impure vaccine matter administered to him by one of the officers or agents of such corporation. *Wyatt v. City of Rome* (31 S. E. 188, 105 Ga. 312, 42 L. R. A. 180, 70 Am. St. Rep. 41).

Under Horner's Rev. St. 1897, sections 7060 and 7061, giving control of the department of health and charities to three commissioners, who shall be practicing physicians, and placing in their charge the city hospital and the efficient regulation and management thereof, the board *acts for the public* and not as agent of the municipality in its corporate character; hence a city is not liable to a patient treated without charge at the city hospital, injured by the alleged unskillful treatment of a physician employed therein. *Williams v. City of Indianapolis* (60 N. E. 367, 26 Ind. App. 628).

A municipal corporation is not liable, in the absence of a statute imposing a liability, for the negligence of its officers in executing health regulations adopted for the purpose of preventing the spread of contagious diseases; for, while undertaking such duty, it is performing a governmental function. *Beeks v. Dickinson County* (108 N. W. 311, 131 Iowa 244, 6 L. R. A. (N. S.) 831).

Police officers are not the agents or servants of the city so as to render it responsible for their unlawful or negligent acts in the discharge of their official duties in the interest of the public. \* \* \*

Dillon (2 Dillon on Municipal Corporations) adds: "and accordingly a city is not liable for an assault and battery committed by its police officers though done in the attempt to enforce an ordinance of the city, nor for an arrest made by them which is illegal for want of a warrant." *Henry Rusher v. City of Dallas* (83 Texas 151).

Where the city acts as the agent of the State, it becomes the representative of sovereignty. It is not acting in the management of its private or corporate concerns, but in the interest of the public and as the guardian of the health, peace, convenience, and welfare of the public. Under such circumstances it is not liable for the acts of its officers or employees engaged in the execution of its ordinances. (2 Dillon on Mun. Corp. Sec. 925; *Culver v. City of Streator*, 22 N. E. 810; *Sarah Whitfield v. The City of Paris*, 84 Texas 431).

The enforcement of quarantine regulations and the establishment and maintenance of pest houses are peculiarly public functions, and a city is not answerable when damages are inflicted through the negligence and misconduct of its officers in their performance. *Geo. N. White v. City of San Antonio* (94 Texas 313).

Where a city, acting in its governmental capacity, passed ordinances for the care, at the pest house, of persons having contagious diseases, and for their removal thereto, the city could not be a participant in the negligent acts of its officers who had charge of the enforcement of such ordinances. *Turyman's Adm'r. v. Board of Councilmen of Frankfort* (78 S. W. 446, 117 Ky. 518, 25 Ky. Law Rep. 1620, 64 L. R. A. 572).

Kentucky statute 1903 section 3058, authorizes cities of second class to establish and enforce quarantine laws to prevent introduction and spread of contagious diseases, and establish hospitals, and section 2059 requires the city council to appoint a board of health, with the same powers within the city that the county board exercises throughout the county. It is held that a city in operating and maintaining such hospitals acts in a governmental capacity, and is therefore not liable for the torts of its officers in charge thereof in maltreating its inmates. *City of Lexington v. Batson's Adm'r.* (81 S. W. 264, 118 Ky. 489, 26 Ky. Law Rep. 363).

If the officers of a board of health do their work negligently, and thereby cause unnecessary damage, such officers, and not the city, are liable, if anyone is. *Webb v. Board of Health of City of Detroit* (74 N. W. 734, 116 Mich. 516, 5 Detroit Leg. N. 1, 72 Am. St. Rep. 541).

A city is not liable in damages to one who was arrested and detained under State law, on the ground of having been exposed to smallpox, where the officers acted properly and without malice, though the plaintiff may have suffered damage thereby. *Levin v. City of Burlington* (39 S. E. 822, 129 N. C. 184, 55 L. R. A. 396).

A city is not liable for damages arising from the act of its board of health in quarantining plaintiff's house and place of business. *Turner v. City of Toledo* (15 Ohio Cir. Ct. R. 627, 8 O. C. D. 196).

The duty of a municipal corporation to conserve the public health is governmental, and it is not liable for injuries inflicted while performing such duty.

A patient in a municipal isolation hospital contracted blood poisoning in a wound caused by getting a splinter from the floor in his foot. He sued the municipality, but the court decided that the municipality was not liable. *Butler v. Kansas City* (Feb. 12, 1917) 155 Pac. Rep. 12).

The duty of a municipal corporation to conserve the public health is governmental, and it is not liable for injuries inflicted while per-

forming such duty (6 McQuillin's Municipal Corporation, sec. 2669). Judge Dillon states the law as follows:

The power or even duty on the part of a municipal corporation to make provision for the public health and for the care of the sick and destitute appertains to it in its governmental or public, and not in its corporate, or, as it is sometimes called, private, capacity. And therefore where a city, under its charter, and the general law of the State enacted to prevent the spread of contagious diseases, establishes a hospital, it is not responsible to persons injured by reason of the misconduct of its agents and employees therein (4 Dillon's Municipal Corporations (5th Ed.), sec. 1661). *Fowle v. Common Council of Alexandria* (3 Pet. 398, 7 L. Ed. 719); *Maximilian v. Mayor* (62 N. Y. 160, 164, 165, 20 Am. Rep. 468).

Also see the following:

*Pfefferle v. Commissioners of Lyon County* (39 Kans. 432, 18 Pac. 506);

*Thomas v. Ellis County* (91 Kans. 443, 138 Pac. 409);

*State v. Lawrence* (79 Kans. 234, 250, 100 Pac. 485);

*City of Caldwell v. Prunelle* (57 Kans. 511, 513, 46 Pac. 949, 950);

*Edson v. Olathe* (81 Kans. 328, 105 Pac. 521, 36 L. R. A. (N. S.) 861); rehearing denied, 82 Kans. 4, 107 Pac. 539, 36 L. R. A. (N. S.) 865;

*La Clef v. City of Concordia* (41 Kans. 323, 21 Pac. 272, 13 Am. St. Rep. 285);

*Evans v. Kankakee* (231 Ill. 223, 83 N. E. 223, 13 L. R. A. (N. S.) 1190);

*Sherbourne v. Yuba County* (21 Cal. 113, 81 Am. Dec. 151);

*City of Richmond v. Long's Adm'rs.* (17 Grat. (Va.) 375, 94 Am. Dec. 461);

*Summers v. Daviess County* (103 Ind. 262, 2 N. E. 725, 53 Am. Rep. 512);

*Murtaugh v. St. Louis* (44 Mo. 479);

*Barbour v. Ellsworth* (67 Me. 294);

*Lynch v. North Yakima* (37 Wash. 657, 80 Pac. 79, 12 L. R. A. (N. S.) 261.

With the law on this important subject so well settled, it seems idle to urge an objection which is without merit to the enforcement of venereal disease quarantine laws.

## BRITISH PROVISION FOR TUBERCULOUS EX-SOLDIERS.

### Village Settlements Urged by a Recent Deputation to the Minister of Health.

A deputation representing the Interdepartmental Committee on Tuberculosis, the Papworth Tuberculosis Colony, and the Norfolk Branch of the British Red Cross Society, recently waited on the British Minister of Health to urge the establishment of village settle-